

1 TRACY L. WILKISON
United States Attorney
2 THOMAS D. COKER
Assistant United States Attorney
3 Chief, Tax Division
NITHYA SENRA (Cal. Bar No. 291803)
4 Assistant United States Attorney
Federal Building, Suite 7211
5 300 North Los Angeles Street
Los Angeles, California 90012
6 Telephone: (213) 894-5810
Facsimile: (213) 894-0115
7 E-mail: Nithya.Senra2@usdoj.gov

8 Attorneys for Petitioner
United States of America
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
13

14 Petitioner,

15 v.

16 JIAJIE CHEN,
17

Respondent.

No. 2:22-cv-02515

PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION IN
SUPPORT THEREOF; AND PROPOSED
ORDER

18 **PETITION**
19

20 Petitioner states:

21 1. This proceeding to judicially enforce an Internal Revenue Service
22 administrative summons is brought pursuant to sections 7402(b) and 7604(a) of the
23 Internal Revenue Code, 26 U.S.C.

24 2. The IRS has properly served Respondent JiaJie Chen, in his capacity as
25 President of DNA Motors Inc., with a summons, and Respondent has failed to appear to
26 produce the requested documents.

27 3. Respondent resides or conducts business or both in the federal judicial
28 district of the Central District of California.

1 4. The Internal Revenue Service (“IRS”) is, and at all relevant times was,
2 conducting an investigation regarding the federal tax liabilities for the entity DNA Motor
3 Inc. for the years 2018 and 2019. Respondent Jiajie Chen, is the sole shareholder,
4 President and registered agent for service of process of DNA Motor Inc. A true and
5 correct copy of the summons issued to JiaJie Chen in his capacity as President of DNA
6 Motor Inc. is attached as Exhibit 1 to the attached Declaration.

7 5. In connection with this investigation, the summons was issued and served in
8 accordance with law on Respondent in the manner described in the Certificate of
9 Service. A true and correct copy of the Certificate of Service is attached as Exhibit 2 to
10 the attached Declaration.

11 6. Respondent has failed to produce the required books, records, papers, and
12 other data in response to the summons, and such failure has continued to the date of this
13 petition.

14 7. With the exception of the documents listed in paragraphs 16 and 17 of the
15 attached declaration, the IRS is not in possession or control of the books, records, papers,
16 and other data sought by the summons.

17 8. All administrative steps required by the Internal Revenue Code in
18 connection with the issuance and service of the summons have been taken.

19 9. The books, records, papers, and other data sought by the summons are
20 necessary in order to properly pursue and complete the investigation.

21 10. No recommendation for criminal prosecution of the individual taxpayers
22 (JiaJie Chen and Maggie X. Liang) or the corporate taxpayer (DNA Motor Inc.) has been
23 made by the IRS to the United States Department of Justice. In addition, no Department
24 of Justice referral, as described in 26 U.S.C. § 7602(d), is in effect with respect to the
25 taxpayer.

26 WHEREFORE, Petitioner requests the Court to enforce the IRS administrative
27 summons as follows:
28

1 A. Respondent be ordered to appear and show cause before this Court why
2 Respondent should not be compelled to produce the books, records, papers, and other
3 data as specified in the summons;

4 B. Respondent be ordered by this Court to appear before an authorized
5 representative of the IRS at a time and place to be determined by the IRS and to produce
6 the books, records, papers, and other data as specified in the summons; and

7 C. The Court grant the Petitioner its costs in this proceeding and such other
8 and further relief as may be just and proper.

9 Dated: April 14, 2022

Respectfully submitted,

10 TRACY L. WILKISON
11 United States Attorney
12 THOMAS D. COKER
13 Assistant United States Attorney
14 Chief, Tax Division

15 /s/ Nithya Senra
16 NITHYA SENRA
17 Assistant United States Attorney

18 Attorneys for Petitioner
19 UNITED STATES OF AMERICA
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Section 7602(a) of the Internal Revenue Code, 26 U.S.C., grants the Internal Revenue Service the power to summon books, papers, records, or other data and to take the testimony of any person for the purpose of ascertaining the correctness of a tax return, to determine a taxpayer's tax liability, and to collect a taxpayer's tax liability as follows:

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--

1. To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
2. To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
3. To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

See also Crystal v. United States, 172 F.3d 1141, 1143-44 (9th Cir. 1999).

Internal Revenue Code Sections 7402(b) and 7604 grant authority to United States district courts to issue orders compelling, through their powers of contempt, compliance

1 with the IRS summonses. *See also United States v. Gilleran*, 992 F.2d 232, 233 (9th Cir.
2 1993). An IRS summons is issued administratively, “but its enforcement is only by
3 federal court authority in ‘an adversary proceeding’ affording the opportunity for
4 challenge and ‘complete protection to the witness.’” *United States v. Church of*
5 *Scientology of California*, 520 F.2d 818, 821 (9th Cir. 1975) (quoting *Donaldson v.*
6 *United States*, 400 U.S. 517, 525 (1971)).

7 Because the enforcement of an IRS summons invokes the process of the court, the
8 court will not enforce a summons if it would constitute an abuse of process. *United*
9 *States v. Powell*, 379 U.S. 48, 58 (1964). Such an abuse would occur if the summons was
10 issued for an improper purpose, such as, for example, to harass the taxpayer. *Id.*, 379
11 U.S. at 58; *United States v. Stuart*, 489 U.S. 353, 360 (1989). Accordingly, to obtain
12 enforcement of an IRS summons, the government is required to make a *prima facie* case
13 for enforcement of the summons. *Crystal*, 172 F.3d at 1143-44; *Gilleran*, 992 F.2d at
14 233.

15 In order to establish a *prima facie* case for enforcement of an IRS summons, the
16 government need only make a “minimal” showing that (1) the investigation will be
17 conducted pursuant to a legitimate purpose; (2) the inquiry may be relevant to the
18 purpose; (3) the information sought is not already within the IRS’s possession; and (4)
19 that the administrative steps required by the Internal Revenue Code have been followed.
20 *Crystal*, 172 F.3d at 1143-44, citing *Powell*, 379 U.S. at 57-58. The government’s
21 “burden is minimal ‘because the statute must be read broadly in order to ensure that the
22 enforcement powers of the IRS are not unduly restricted.’” *Crystal*, 172 F.3d at 1144
23 (quoting *Liberty Financial Services v. United States*, 778 F.2d 1390, 1392 (9th Cir.
24 1985)). Once the Government has made its *prima facie* case, the summoned party bears
25 the “heavy” burden to “disprove the actual existence of a valid civil tax determination or
26 collection purpose by the Service[.]” *Crystal*, 172 F.3d at 1144.

27 Normally, the government makes the “good faith” showing of materiality and
28 relevancy required by *Powell* in the petition to enforce the summons and the

1 accompanying declaration of the issuing IRS agent. *See Crystal*, 172 F.3d at 1144
2 (quoting *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993)).

3 As to the required showing of relevance, the Supreme Court stated in *United*
4 *States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984):

5 As the language of § 7602 clearly indicates, an IRS summons is not to be
6 judged by the relevance standards used in deciding whether to admit
7 evidence in federal court. *Cf.* Fed. Rule Evid. 401. The language “may be”
8 reflects Congress’ express intention to allow the IRS to obtain items of even
9 potential relevance to an ongoing investigation without reference to its
10 admissibility. The purpose of Congress is obvious: the Service can hardly
11 be expected to know whether such data will in fact be relevant until it is
12 procured and scrutinized. As a tool of discovery, the §7602 summons is
13 critical to the investigation and enforcement functions of the IRS, *see*
14 *United States v. Powell*, 379 U.S. 48, 57 (1964); the Service therefore
15 should not be required to establish that the documents it seeks are actually
16 relevant in any technical, evidentiary sense.

17 (emphasis in original).

18 “Once the Government has established its *prima facie* case, the district court
19 issues an order requiring the party on whom the summons has been served to show
20 cause, at an enforcement hearing, why compliance with the summons should not be
21 required.” *United States v. Samuels, Kramer and Co.*, 712 F.2d 1342, 1345 (9th Cir.
22 1983). The burden of proof is shifted to the person challenging the summons to “refute
23 the Government’s *Powell* showing of good faith to oppose successfully the enforcement
24 of an IRS summons.” *Id.* at 1346; *see also Crystal*, 172 F.3d at 1144. “The taxpayer may
25 challenge and attempt to rebut the *prima facie* case of good faith the government has
26 established or attempt to show that enforcement of the summons would otherwise
27 constitute an abuse of process.” *Gilleran*, 992 F.2d at 233; *see also Crystal*, 172 F.2d at
28

1 1144. “The taxpayer, however, carries a heavy burden of convincing the district court to
2 deny enforcement.” *Stuckey*, 646 F.2d at 1372; *accord Crystal*, 172 F.3d at 1144.

3 “[S]ummons enforcement proceedings should be summary in nature and
4 discovery should be limited.” *Derr*, 968 F.2d at 945, quoting *Stuart*, 489 U.S. at 369,
5 quoting S. Rep. No. 97 494, 97th Cong. 2d Sess., vol. 1, 285 (1982); *see also, Church of*
6 *Scientology*, 520 F.2d at 821.¹ “The taxpayer must allege specific facts and evidence to
7 support his allegations’ of bad faith or improper purpose.” *Crystal*, 172 F.3d at 1144
8 (quoting *United States v. Jose*, 131 F.3d 1325, 1328 (9th Cir. 1997)) and *Liberty*
9 *Financial Services*, 778 F.2d at 1392. A party opposing the summons must be able to
10 come forward with at least “a minimal amount of evidence just to entitle him or her to an
11 evidentiary hearing.” *Stuckey*, 646 F.2d at 1372. In this Circuit, the Court may allow
12 limited discovery “only if the taxpayer can make a substantial preliminary showing of
13 abuse or wrongdoing.” *Stuckey*, 626 F.2d at 1374.

14 In *Donaldson*, 400 U.S. at 528-29, the Supreme Court noted that Rule 81(a)(3) of
15 the Federal Rules of Civil Procedure allows the Court to limit the application of the
16 federal rules in summons enforcement proceedings. In keeping with the summary nature
17 of these proceedings, the show cause order is an appropriate tool to place the burden of
18 proof on the summoned party after the government’s *prima facie* case has been made.

19 If no substantial challenge to the validity of the summons is made in a sworn
20 affidavit or declaration alleging specific facts, the matter should be decided on the
21 pleadings before the district court with no further proceedings, the summons should be
22 enforced, and the IRS should be allowed to obtain the summoned testimony, books,

23 ¹ The Fifth Circuit has discussed the procedure to be followed in summons enforcement proceedings:

24 To ascertain whether there is any basis for questioning the summons, the traditional show cause
25 order is an effective and appropriate procedural tool. Indeed, it harmonizes procedure with the
26 substantive principle that puts the burden on the summoned party “of showing an abuse of the
27 court’s process.” *Powell*, (note 17, *supra*). In no way does its use extinguish the adversary
28 proceeding which the decisions call for. Rather it is a principle means by which the enforcing
Court can determine whether there is anything to “hear” and if so to give proper scope and
direction to an orderly, but expeditious, adjudication of the points in controversy.

United States v. Newman, 441 F.2d 165, 169 (5th Cir.1971).

1 papers, records, and other data. *See, e.g., Liberty Financial Services*, 778 F.2d at 1392-
2 93 (IRS affidavit was not controverted).

3 “Enforcement of a summons is generally a summary proceeding to which a
4 taxpayer has few defenses.” *Derr*, 968 F.2d at 945; *accord Crystal*, 172 F.3d at 1144.
5 “[T]he sole purpose of the enforcement proceeding is to ensure that the IRS has issued
6 the summons for proper purpose and in good faith, and . . . the district court is strictly
7 limited to enforcing or denying IRS summonses.” *Jose*, 131 F.3d at 1328-29.

8 **II. CONCLUSION**

9 Accordingly, the filing of the petition to enforce IRS summons and the declaration
10 of the issuing IRS agent establish the government’s *prima facie* case for enforcement of
11 the summons. As attested to in the declaration of the IRS agent who issued the
12 summons, the IRS is conducting an investigation to determine the tax liabilities of JiaJie
13 Chen and his wife, Maggie X. Liang and the related corporate entity DNA Motors Inc.
14 (an S-Corporation for 2018 and a C-Corporation for 2019), collect those liabilities, or
15 both, for the tax periods identified in the summons; the information sought by the
16 summons may be relevant to that purpose; the IRS does not already have possession of
17 the information sought; and the administrative steps required by the Internal Revenue
18 Code for issuance and service of the summons were followed. The Court should now
19 issue an order directing Respondent to show cause why the IRS summons should not be
20 enforced.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 If Respondent fails to respond to or rebut the government's *prima facie* case for
2 enforcement, then the Court should issue an order enforcing the IRS summons and
3 compelling Respondent to appear before an authorized representative of the IRS at a
4 time and place to be determined by the IRS, and give testimony and produce the books,
5 records, papers, and other data for examination and copying as required by the Internal
6 Revenue Service summons.

7 Dated: April 14, 2022

Respectfully submitted,

8 TRACY L. WILKISON
United States Attorney
9 THOMAS D. COKER
Assistant United States Attorney
10 Chief, Tax Division

11
12 /s/ Nithya Senra

13 NITHYA SENRA
Assistant United States Attorney

14 Attorneys for Petitioner
15 UNITED STATES OF AMERICA
16
17
18
19
20
21
22
23
24
25
26
27
28